

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

STATE OF MISSOURI,

Respondent,

v.

GIOVANNI BARCELONA,

Appellant.

DOCKET NUMBER WD77046

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: March 24, 2015

APPEAL FROM

The Circuit Court of Lafayette County, Missouri
The Honorable Dennis A. Rolf, Judge

JUDGES

Division Two: Gabbert, P.J., and Ellis and Mitchell, JJ.

CONCURRING.

ATTORNEYS

Chris Koster, Attorney General
Richard A. Starnes, Assistant Attorney General
Jefferson City, MO

Attorneys for Respondent,

Margaret M. Johnston, Assistant Public Defender
Columbia, MO

Attorney for Appellant.



MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

STATE OF MISSOURI,)
)
Respondent,)
v.) **OPINION FILED:**
) **March 24, 2015**
GIOVANNI BARCELONA,)
)
Appellant.)

WD77046

Lafayette County

Before Division Two Judges: Anthony Rex Gabbert, Presiding Judge, and Joseph M. Ellis and Karen King Mitchell, Judges

Giovanni Barcelona was tried by a jury for the class D felony of unlawful use of drug paraphernalia, § 195.233, the class D felony of failure to appear, § 544.665, the class A misdemeanor of operating a vehicle without a valid license, § 302.020, and the class B misdemeanor of making a false report, § 575.080. At trial, Barcelona admitted guilt as to the misdemeanor offenses, and the jury found him guilty of the two felony offenses. The court sentenced Barcelona, as a persistent felony offender, to a total of twelve years' imprisonment. In this appeal, he argues that the trial court erred in overruling his motion to suppress and admitting the fruits of an allegedly invalid traffic stop and that the evidence was insufficient to support either felony conviction.

AFFIRMED IN PART; REVERSED IN PART.

Division Two holds:

1. The protection of the Fourth Amendment against unreasonable search and seizure does not apply to actions of private individuals not acting pursuant to a request by the police.
2. The traffic stop was supported by reasonable suspicion.
3. The distinction between misdemeanor and felony possession of drug paraphernalia lies not only in the nature of the intended use but also in the nature of the substance to be

used (amphetamine, methamphetamine, or their analogues) and the number of items of paraphernalia possessed at any given time.

4. The evidence was insufficient to support Barcelona's conviction for felony possession of drug paraphernalia, as it did not support the required intended use.
5. The evidence was sufficient to support Barcelona's conviction for failure to appear.

Opinion by: Karen King Mitchell, Judge

March 24, 2015

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